

AMENDED IN SENATE AUGUST 7, 2014

AMENDED IN SENATE JULY 1, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2603

**Introduced by Assembly Member V. Manuel Pérez
(Coauthor: Assembly Member Chesbro)**

February 21, 2014

An act to amend Sections 11350 and 11377 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2603, as amended, V. Manuel Pérez. Controlled substances: permissive lawful possession.

Existing law, subject to certain exceptions, provides that it is a crime for any person to possess specified controlled substances, punishable by a fine or imprisonment in a county jail, as specified, unless it is upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

This bill would create an exception from these prohibitions for possession of those controlled substances by a person other than the prescription holder if the possession of the controlled substance is at the direction or with the express authorization of the prescription holder and the sole ~~purpose of the possession~~ *intent of the possessor* is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(c) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) or (b), the judge may, in addition to any punishment provided for pursuant to subdivision (a) or (b), assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(d) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars (\$1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars (\$2,000) or community service.

1 (3) If a defendant does not have the ability to pay the minimum
2 fines specified in paragraphs (1) and (2), community service shall
3 be ordered in lieu of the fine.

4 (e) It is not unlawful for a person other than the prescription
5 holder to possess a controlled substance described in subdivision
6 (a) if both of the following apply:

7 (1) The possession of the controlled substance is at the direction
8 or with the express authorization of the prescription holder.

9 (2) The sole ~~purpose of the possession~~ *intent of the possessor*
10 is to deliver the prescription to the prescription holder for its
11 prescribed use or to discard the substance in a lawful manner.

12 (f) This section does not permit the use of a controlled substance
13 by a person other than the prescription holder or permit the
14 distribution or sale of a controlled substance that is otherwise
15 inconsistent with the prescription.

16 SEC. 2. Section 11377 of the Health and Safety Code is
17 amended to read:

18 11377. (a) Except as authorized by law and as otherwise
19 provided in subdivision (b) or Section 11375, or in Article 7
20 (commencing with Section 4211) of Chapter 9 of Division 2 of
21 the Business and Professions Code, every person who possesses
22 any controlled substance which is (1) classified in Schedule III,
23 IV, or V, and which is not a narcotic drug, (2) specified in
24 subdivision (d) of Section 11054, except paragraphs (13), (14),
25 (15), and (20) of subdivision (d), (3) specified in paragraph (11)
26 of subdivision (c) of Section 11056, (4) specified in paragraph (2)
27 or (3) of subdivision (f) of Section 11054, or (5) specified in
28 subdivision (d), (e), or (f) of Section 11055, unless upon the
29 prescription of a physician, dentist, podiatrist, or veterinarian,
30 licensed to practice in this state, shall be punished by imprisonment
31 in a county jail for a period of not more than one year or pursuant
32 to subdivision (h) of Section 1170 of the Penal Code.

33 (b) (1) Any person who violates subdivision (a) by unlawfully
34 possessing a controlled substance specified in subdivision (f) of
35 Section 11056, and who has not previously been convicted of a
36 violation involving a controlled substance specified in subdivision
37 (f) of Section 11056, is guilty of a misdemeanor.

38 (2) Any person who violates subdivision (a) by unlawfully
39 possessing a controlled substance specified in subdivision (g) of
40 Section 11056 is guilty of a misdemeanor.

1 (3) Any person who violates subdivision (a) by unlawfully
2 possessing a controlled substance specified in paragraph (7) or (8)
3 of subdivision (d) of Section 11055 is guilty of a misdemeanor.

4 (4) Any person who violates subdivision (a) by unlawfully
5 possessing a controlled substance specified in paragraph (8) of
6 subdivision (f) of Section 11057 is guilty of a misdemeanor.

7 (c) In addition to any fine assessed under subdivision (b), the
8 judge may assess a fine not to exceed seventy dollars (\$70) against
9 any person who violates subdivision (a), with the proceeds of this
10 fine to be used in accordance with Section 1463.23 of the Penal
11 Code. The court shall, however, take into consideration the
12 defendant's ability to pay, and no defendant shall be denied
13 probation because of his or her inability to pay the fine permitted
14 under this subdivision.

15 (d) It is not unlawful for a person other than the prescription
16 holder to possess a controlled substance described in subdivision
17 (a) if both of the following apply:

18 (1) The possession of the controlled substance is at the direction
19 or with the express authorization of the prescription holder.

20 (2) The sole ~~purpose of the possession~~ *intent of the possessor*
21 is to deliver the prescription to the prescription holder for its
22 prescribed use or to discard the substance in a lawful manner.

23 (e) This section does not permit the use of a controlled substance
24 by a person other than the prescription holder or permit the
25 distribution or sale of a controlled substance that is otherwise
26 inconsistent with the prescription.